

\*NO COPY OF THIS TRANSCRIPT MAY BE MADE PRIOR TO JUNE 21, 2023

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

U.S. SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LBRY, INC.

Defendant.

\* \* \* \* \*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

1:21-cv-260-PB  
February 6, 2023  
11:03 a.m.

TRANSCRIPT OF STATUS CONFERENCE  
HELD VIA VIDEOCONFERENCE  
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Plaintiff:

Peter Moores, Esq.  
Marc Jonathan Jones, Esq.  
Securities and Exchange Commission

For the Defendant:

Keith Miller, Esq.  
Emily Drinkwater, Esq.  
Perkins Coie LLP  
  
Timothy John McLaughlin, Esq.  
Shaheen & Gordon

Court Reporter:

Liza W. Dubois, RMR, CRR  
Official Court Reporter  
U.S. District Court  
55 Pleasant Street  
Concord, New Hampshire 03301  
(603) 225-1442



1 P R O C E E D I N G S

2 THE CLERK: Good morning, Judge.

3 We're here in the matter of United States Securities  
4 and Exchange Commission vs. LBRY, Inc., 21-cv-260-PB, for  
5 status conference.

6 THE COURT: So I had a very narrow and specific  
7 purpose for wanting to hold this conference. That is to  
8 determine what, if any, additional discovery the SEC will be  
9 entitled to engage in to allow me to complete this case and  
10 issue a final order in it.

11 And I -- in my mind, there are three potential  
12 issues that -- on which we might need to have some discovery.

13 One would be on LBRY's evidence of its gross  
14 receipts; another would be on -- on LBRY's assertion that its  
15 legitimate business expenses equal or exceed its gross receipts  
16 from the sale of LBC; and the third issue is the contention  
17 that the SEC makes that LBRY continued to make sales of LBC  
18 after the lawsuit was brought.

19 Those seemed to me to be the only issues on which  
20 there would be any potential need for discovery to address the  
21 parties' competing arguments at the last hearing.

22 So let me start with the SEC and, tell me, what is  
23 your perspective on what the minimal amount of discovery you  
24 need to do to be able to stake out some final positions on the  
25 remaining issues?



1 MR. JONES: Yes, your Honor. Thank you. This is  
2 Mark Jones for the Securities and Exchange Commission. With me  
3 this morning is Peter Moores.

4 In looking at it, your Honor, and in talking with  
5 defense counsel on Friday in an effort to try to get some  
6 issues resolved, the Commission believes that -- there's a  
7 couple of contingencies, your Honor.

8 If, in fact, LBRY is going to be willing to produce  
9 its general ledger, electronic files, you know, its QuickBooks  
10 files, the Commission believes that that could go a long way  
11 toward narrowing some issues. And so the Commission would like  
12 a few document requests, including those QuickBooks files and  
13 some information on a couple of the notes or loans that appear  
14 on the balance sheet for LBRY as submitted to the Court.

15 So just a few document requests, perhaps three or  
16 four, some interrogatories or RFAs. Obviously, we'll narrow  
17 those as much as we can. We think ten or less total of  
18 interrogatories and RFAs.

19 And then in depositions, your Honor, we think two or  
20 three depending on this issue, your Honor. Mr. Miller and I, I  
21 think, have a difference of opinion whether LBRY should be  
22 required to produce information and respond to interrogatories  
23 about its wholly owned subsidiary as the party that's in  
24 possession, custody, or control of that information as its  
25 whole -- as its wholly owning parent. Mr. Miller, on the other



1 hand, I believe, does not believe that LBRY should be required  
2 to give information on Odysee.

3 This is particularly important, your Honor, because  
4 obviously the asset of Odysee owned by LBRY is currently shown  
5 as a \$1,000 par value asset on the balance sheet. This is a  
6 website that gets, by some estimates, 10 to 30 million visits a  
7 month, has advertising revenue, has other revenue, has -- and  
8 we believe that the thousand dollars that are represented is  
9 not quite accurate.

10 And, obviously, if you raise a bunch of money and  
11 then build a business and then build a subsidiary business, the  
12 subsidiary business is an asset that should be considered as  
13 part of that gross receipts.

14 So that's sort of the --

15 THE COURT: It sounds like you're singing a somewhat  
16 different tune about Odysee than you were singing earlier in  
17 the litigation when you seemed to be portraying it as, you  
18 know, just a meaningless business that was designed to support  
19 a revenue raising operation.

20 Now it's an important business with lots of visits  
21 and -- I just find that a little bit ironic.

22 MR. JONES: Well, your Honor, a couple of things on  
23 that.

24 One is it depends on what time period you're looking  
25 at, your Honor. Odysee is a business that's launched during



1 the course of the litigation. In the last year, say, it's been  
2 a year since we've been filing summary judgment, that business  
3 has continued to be invested in, that business has continued to  
4 grow. It -- it's I think not entirely accurate to say that our  
5 position now is contradicting our position then.

6 THE COURT: Well, I'm not -- I just -- I probably  
7 shouldn't have said anything, but I know what -- having --  
8 hearing you make that statement, one can only imagine what is  
9 going through the minds of people at LBRY because they would, I  
10 assume, if I allowed them to, which I will not allow them to  
11 do, be screaming about what they think of as the hypocrisy of  
12 your statement. I -- but I don't want to waste any more time  
13 on it.

14 There is a -- there is a loan that was made of  
15 over a million dollars and perhaps there should be some  
16 informational allowed with respect to that. But the idea that  
17 we need to have some far-reaching investigation into Odysee's  
18 current operations seems to me to be excessive, but perhaps we  
19 can reach some agreement with respect to the loan proceeds and  
20 the -- you know, the basic current financial status of Odysee.

21 MR. JONES: Your Honor, absolutely. And I was not  
22 suggesting a far-reaching investigation by any stretch. All  
23 I'm asking, your Honor, is that we be allowed to ask a couple  
24 of questions about what the value of the Odysee business is.  
25 It's listed on the balance sheet. It goes to the gross



1 receipts. It's currently listed as \$1,000 of asset. And we  
2 need to know --

3 THE COURT: How -- let me ask you, Counsel.

4 So it was represented to me at the last hearing that  
5 LBRY is not paying any employees, doesn't have anybody who's on  
6 staff who can be paid to do the work of responding to document  
7 requests. How do you propose to deal with that particular  
8 problem? Because it does seem to me unrealistic to expect  
9 former employees or employees not being paid to volunteer their  
10 time to respond to document requests and interrogatories.

11 Depositions, you can notice up a deposition and  
12 require the person to attend, but I'm -- it's not clear to me  
13 that you can force unpaid employees to spend substantial  
14 amounts of time responding to your document requests and  
15 interrogatories.

16 MR. JONES: Well, your Honor, the -- the Commission  
17 is essentially in between a rock and a hard place here. I  
18 mean, LBRY has said, we're going out of business, we're not  
19 paying any employees. The website still up. The business is  
20 still operating. The number of the employees appear to be here  
21 on the call this morning.

22 It's -- it's -- it's hard for us to navigate  
23 between, oh, we can't -- I mean, we've heard this all the way  
24 through discovery, your Honor: Oh, we can't do that, it's too  
25 expensive; oh, we can't do that, it's too intensive; you know,



1 you'll have to come to us, you'll have to not get those  
2 documents. It's --

3 THE COURT: Let me ask you this. Are the -- maybe  
4 LBRY's counsel can respond to this. I mean, is access to  
5 general ledger information, all of that is electronic, it would  
6 seem relatively -- not a time-consuming matter to make that  
7 electronic information available to -- to the SEC without --  
8 that wouldn't require poring through people's individual PCs  
9 and looking at hard drives and doing that kind of work. It  
10 seems that could probably be produced relatively inexpensively.

11 But I want to be clear. I don't -- I don't want to  
12 impose obligations on LBRY that it's not in a position to meet.  
13 So that's what I'm -- I'm focused on.

14 But let me -- rather than -- let me identify some  
15 issues here.

16 So I think you claim gross receipts from LBC sales  
17 of 22 million and change. LBRY admits to 14 million in change.  
18 A -- a big chunk of that is money that you -- or receipts that  
19 you would attribute to LBRY for distributions of community fund  
20 LBC as incentives to partners and other entities.

21 And, I mean, that's -- it seems to me that there's a  
22 potential issue about what the gross -- gross receipts are.  
23 Should it be 14 million, as LBRY claims; should it be 22  
24 million or something in between that you claim. And that --  
25 that certainly seems to be a -- an issue that we could allow



1 some discovery on.

2           There appears to be an issue about LBRY's assertion  
3 that there should be no disgorgement remedy because there's no  
4 net profit and there's no net profit because the legitimate  
5 business expenses of the business exceed revenue from receipts  
6 from sales of LBC.

7           And there's an argument about this million dollar  
8 loan to Odyssey and then there's a -- an argument that the SEC  
9 has advanced, the -- the company continued -- that I should  
10 take into account the fact that the company continued to make  
11 about 400,000 in sales of LBC after the lawsuit was brought.

12           And LBRY's response to that, as I understand it, is  
13 we did have the employee program, we continued that for a  
14 while, and we also had a small number of what we thought were  
15 consumptive sales through MoonPay that explain any matters and  
16 should be treated by the Court as innocent sales of LBC,  
17 whether they technically violate the registration requirement  
18 or not, they don't support what the SEC is saying, which is a  
19 kind of willful disregard by the -- of LBRY of the -- the  
20 realities that it needed to be attending to that the sales were  
21 registerable offerings of the LBC.

22           So, in my mind, those would be -- at least those are  
23 all financial issues, those are all about investigating various  
24 claims that LBRY made, and I -- or claims that the SEC made and  
25 LBRY's response. And I think some legitimate, narrow, focused



1 discovery on that should be -- should be warranted.

2 It sounds like your position would be some document  
3 requests or interrogatories, that shouldn't be overly  
4 time-consuming, and two or three depositions.

5 I would be inclined to limit them to, say, three  
6 hours and to try to get -- and have them focused on these  
7 particular topics that would be agreed to in advance. So if I  
8 were to allow it, that's what I'd be doing.

9 But let me get LBRY's counsel's basic response to  
10 this.

11 Counsel, what do you have to say to the SEC's  
12 requests other than don't make them -- us do anything, Judge.

13 MR. MILLER: Yeah. I -- I'm trying to approach this  
14 and trying to be practical about what's going on here, your  
15 Honor.

16 THE COURT: I appreciate that. Yeah.

17 MR. MILLER: And we did have a conversation with  
18 Mr. Jones. We have the QuickBooks expenses. So he can go  
19 through all the expenses and he can identify, and I would  
20 suggest that he identify a handful, any written  
21 interrogatories, say, on such and such a date, you know,  
22 \$455,000, there's an expense, it's categorized as X, we would  
23 like to know the basis of it.

24 I think that's the way to have this -- again,  
25 limited resources. We don't have the time or money to be able



1 to do this. There are affidavits in.

2 Mr. Julian Chandra, who is CEO of Odysee, has put in  
3 an affidavit. They have no money. They're -- they're, in  
4 essence, out of business as well.

5 THE COURT: Counsel, let me understand. You're  
6 willing to give access to the QuickBooks files; you would  
7 suggest that that be the starting point, that LBRY -- that  
8 the SEC be required to respond with a narrow, focused set of  
9 requests identified to particular charges requiring additional  
10 explanation and that that -- that you're willing to do at least  
11 that much. Is that fair to say?

12 MR. MILLER: Yes.

13 THE COURT: Okay. So that's a good starting point.

14 Now, should it go beyond that at all to any  
15 depositions, if I were to do -- if I were to allow additional  
16 depositions, it would, again, be on these narrow, focused  
17 topics and it's not clear to me that we need to do those  
18 depositions, but there would have to be some specific reason to  
19 justify it.

20 So, Counsel, then, it seems like we have the makings  
21 of an agreement here that would not be burdensome with respect  
22 to the QuickBooks files which would address the P&L statement  
23 which would allow us to examine both the gross receipts and the  
24 legitimate business expenses which would go a long way towards,  
25 in my mind, giving the SEC the limited opportunity I think it



1 should have to just make sure that there aren't any kind of  
2 gaping holes here where we're not really understanding what is  
3 happening.

4           There is this issue of the expenditures by the  
5 company after -- excuse me -- the sales by the company after  
6 the lawsuit was commenced and I think you identified about  
7 400,000 and change in sales that you say either are under the  
8 employee program or MoonPay consumptive sales that average  
9 about \$40 per sale.

10           So one response that the SEC made to that was to  
11 produce a P&L statement for the March to October quarter in  
12 which they limit -- they identify LBC sales of 2.7 million and  
13 say that you don't have an explanation for that.

14           Mr. Jones, do I have that right? Is that your --  
15 one of your arguments is based on this P&L statement and the  
16 2.7 income from LBC sales?

17           MR. JONES: Yes, your Honor. We did have some  
18 questions about that. We may be able to work them out with Mr.  
19 Miller. We may need to ask questions about them in the  
20 discovery process here.

21           THE COURT: So, Mr. Miller, I don't know if you -- I  
22 don't want to put you on the spot here if you don't have an  
23 answer for this at the moment, but that's one issue that I  
24 think the -- that the SEC should be entitled to work with you  
25 to try to find some pragmatic answer so that -- that satisfies



1 the SEC. There probably is an explanation for it. Perhaps you  
2 can provide it in an informal way that would be satisfactory to  
3 the SEC. If not, the -- we could do -- it could be dealt with  
4 in a formal, focused way.

5 So, Mr. Jones, why should I not issue an order  
6 saying that the SEC has requested the opportunity to do some  
7 additional discovery; LBRY has agreed to produce the QuickBooks  
8 files supporting its -- the P&L statement they offered with  
9 respect to sales.

10 In -- after receiving that information, the SEC  
11 shall have a period of time which we'll agree to in which to  
12 present any specific, focused requests for documents or  
13 interrogatories addressing specific issues -- specific issues  
14 with the P&L statement that LBRY submitted.

15 And we could also allow you to make some limited,  
16 focused requests with respect to the sales during the -- during  
17 the period that the lawsuit was -- was pending and then after  
18 that leave it to you to make, if you -- if necessary, a  
19 supplemental request for a limited number of depositions that  
20 if you could demonstrate that there are these specific issues  
21 that need to be resolved by deposition, then I'd let you do  
22 them.

23 And that would wrap it up. Then you could submit a  
24 final memorandum, LBRY could respond, I'd take the matter under  
25 advisement, and then I'd issue an order. What do you think?



1           MR. JONES: Your Honor, I -- I definitely  
2 appreciate, your Honor, the Court's efforts to get this  
3 narrowed. And we're not looking for a wide-ranging exercise  
4 here. We do have an exercise -- you know, it is our  
5 responsibility to make sure that we get the disgorgement  
6 request at least right.

7           I would say two things, your Honor. The plan as  
8 your Honor laid out I think makes a lot of sense. Two things.  
9 The first is I believe that based on what we've seen from LBRY,  
10 that although there will be questions that come up from the  
11 interrogatories -- the QuickBooks files and other documents  
12 perhaps that I want to talk to your Honor about in a minute  
13 that the records kept will not be sufficient to answer all  
14 those questions and that if history is any indication even the  
15 interrogatory responses, unless we ask, you know, a large  
16 number of very detailed questions will not be detailed enough  
17 to actually answer the questions.

18           I think the depositions of the -- of the company and  
19 of the people -- of the person who is in charge of the finances  
20 of the company, the COO, CFO, I think they're going to be  
21 necessary based on our history with discovery in this case. It  
22 just -- the documents, though a good start, are not going to be  
23 enough.

24           THE COURT: Yeah, that may be true and the reason  
25 I'm suggesting that we proceed sequentially is just -- look, I



1 think both you and Mr. Miller are reasonable people who can  
2 work together on this kind of a pragmatic issue here. I  
3 recognize the -- the -- I think both of you know that when I  
4 get involved in these kinds of matters, I don't want people  
5 coming back to me with -- taking unreasonable positions. And  
6 if they do come back to me taking unreasonable positions, there  
7 are going to be consequences and people aren't going to be  
8 happy.

9               So I'm confident that with that understanding you  
10 may well need a deposition. But then if I ordered it, I could  
11 say, you could depose person A for this period and you can  
12 cover the following issues in that deposition, nothing else.  
13 And that way it would be able to get resolved quickly.

14              So I'm not in any way suggesting you won't be able  
15 to do depositions, but I also think that, Mr. Jones, you could  
16 work with Mr. Miller and say, look, we've got the QuickBooks  
17 files, here's what we're looking for, all right, can you tell  
18 me about these following things and we're not trying to use  
19 this discovery -- we aren't going to use this to harass people;  
20 if you can answer these questions for us we'll be narrower in  
21 the scope of what additional discovery we'll need.

22              So I get your point, and you may well need to do  
23 depositions, especially if you get really limited responses.  
24 On the other hand, if you -- I would expect you, rather than to  
25 just to leap to, oh, we need a deposition, that you -- to put a



1 call in to Mr. Miller and say, look, here's the thing, here's  
2 the things that are concerning.

3 And I get it. I want -- I think you're entitled to  
4 a fair opportunity to build the record for the legal argument  
5 you want to make about disgorgement and about the scope of the  
6 fine. I am -- I will consider any evidence you produce on  
7 that.

8 My principal concern is that you are -- at least be  
9 given an opportunity to satisfy yourself that these entries are  
10 not wholly unsupported. And I have no reason to suspect that  
11 that there is any kind of misreporting going on here, so I  
12 don't want to in any way for anyone to suggest that I think  
13 LBRY is doing something nefarious.

14 But it's a -- it's a trust but verify situation and  
15 I think you're entitled to make sure that you've satisfied  
16 yourself that there isn't \$5 million in a Swiss bank account  
17 somewhere, you know.

18 And that -- I know you have broader arguments; you  
19 have arguments that, oh, the community fund money should go  
20 into the gross receipts, LBC, at the valuation we put it in  
21 because we think disgorgement should be based on gross -- but  
22 to me the community fund issue seems to be -- to me to be less  
23 important because in terms of actual profit and loss, to the  
24 extent you have to list it as a gross receipt, it's all -- it's  
25 also a legitimate business expense.



1           So you have a different take on all that, I  
2 understand, but that is not -- that isn't the kind of thing  
3 that is my principal concern here.

4           So all right. So I hear you on that and it sounds  
5 like the step one here would be LBRY producing -- after a  
6 meet-and-confer with you -- producing the QuickBooks files and  
7 perhaps a limited other subset of additional electronic  
8 information that could be produced at relatively low cost and  
9 time; that following the receipt of those, you would have a  
10 brief period to review the materials and to follow up with a  
11 specific set of document requests and interrogatories  
12 addressing issues raised with respect to the materials that  
13 LBRY has produced; that the parties would -- that LBRY would  
14 make a good faith attempt to fully and fairly respond to those  
15 matters and it would be in Mr. Miller's interest to work  
16 practically with you to -- to ensure that those responses are  
17 sufficiently fulsome, that they may answer the question, and  
18 that if they aren't, that you could come back to the Court with  
19 a limited set of requests for depositions, talking one, two or  
20 three, talking limited time periods, talking on focusing --  
21 focused subjects; I would either allow in part or in whole or  
22 not the requests for the depositions; and then set a schedule  
23 for LBRY to -- excuse me, the SEC to file supplemental brief  
24 and if LBRY chooses, a brief chance for a response.

25           And I think that should -- should cover it with



1 respect to most of the issues.

2 With respect to the Odysee loan, it doesn't seem to  
3 me that you have an opportunity to -- you should have a limited  
4 opportunity to engage in discovery about what happened to the  
5 million dollar loan and is Odysee in the current financial  
6 situation it's in, it represents that it's in; you should be  
7 allow to test in, again, a very limited way, the assertion that  
8 LBRY has made about Odysee's findings. And then that's the  
9 end.

10 Acceptable to you, Mr. Jones?

11 MR. JONES: Your Honor, of course. And the -- the  
12 SEC appreciates the staged, reasonable approach that the Court  
13 is laying out and we definitely appreciate the chance to  
14 have -- if there's going to be depositions -- topics for those  
15 depositions blessed ahead of time as opposed to trying to hash  
16 them out at the deposition table, which usually happens.

17 I would make one request, your Honor, that in  
18 addition to the P&L statement, LBRY has submitted its balance  
19 sheet to you. There are substantial questions on that balance  
20 sheet but they are relying about -- relying for it in their  
21 argument that they have no money and no value at this point.

22 There are questions such as there is a -- a zero  
23 entry for bitcoin listed on the balance sheet and yet there is  
24 an unrealized gain or loss for that bitcoin. It makes no  
25 sense.



1           There is the Odyssey loan, of course. There's  
2 another loan, a Futo loan. And we'd just ask, your Honor, in  
3 making discovery requests that we're going to make if we not be  
4 limited to just the P&L but to the P&L and that balance sheet  
5 that has been submitted to the Court because there is  
6 substantial questions about it, including what the value of the  
7 assets are that LBRY is holding and how they reflected those on  
8 the balance sheet they've submitted to the Court.

9           THE COURT: I'm going to let Mr. Miller respond in  
10 just a second, but if I allow that, which I would be inclined  
11 to do, it would be, again, limited to a specific issue that  
12 bear on the questions that are -- remain for me to resolve.

13           MR. JONES: Of course, your Honor.

14           THE COURT: That is, is there -- should there be an  
15 injunction, should there be disgorgement, should there be a  
16 penalty, what is the amount of disgorgement and penalty if I  
17 determine they are appropriate. And it has to be good reasons.  
18 There isn't a fishing expedition. We're too far into the  
19 litigation for that.

20           So anything I allow, you have to be narrow and  
21 focused. And, you know, I suppose I would say that I -- I  
22 rarely like to get involved with this. What I would suggest  
23 we -- you do is have a meet-and-confer and hash this out. And  
24 to the extent you still have problems, I can get the two of you  
25 in front of me and say, all right, what's the first problem. I



1 don't like to do this. I like other people to do this rather  
2 than me. But I'll do it, if necessary. Okay?

3 MR. JONES: Yes, your Honor.

4 THE COURT: Go ahead.

5 MR. JONES: We just want to be able to make the  
6 argument to you if it's supported by the facts, your Honor,  
7 that LBRY, you know, raised 22 million and spent 22 million,  
8 let's say, but now has a business or assets worth 10 million,  
9 in a disgorgement analysis that would be relevant to your  
10 Honor, if not necessarily dispositive but relevant, and we just  
11 want that to be part of the discovery process so we could make  
12 that argument. That would be the profit of the money raised,  
13 those assets, that value of the business.

14 THE COURT: Mr. Miller, you're -- your thoughts  
15 about all of this.

16 MR. MILLER: Yeah. Your Honor, I -- we've been  
17 talking about disgorgement and how do we get discovery around  
18 the disgorgement, but I think it would help LBRY, it would help  
19 this matter, frankly, if your Honor would rule on the other two  
20 issues that I -- I took that you didn't have a problem with,  
21 which was the injunctions and the civil penalty.

22 I think having that out, particularly given the  
23 situation that LBRY is in, is extremely, extremely beneficial,  
24 your Honor. And so I'd ask you to consider at least  
25 bifurcating the injunction and civil penalty from the



1 disgorgement final judgment.

2 THE COURT: Well, there are a couple of things that  
3 I still need to think about with respect to the injunction that  
4 don't turn on dollars and cents. I'll just explain my -- what  
5 I need to be thinking about and I -- and I want to get an order  
6 out. I will as soon as I can. But I also have several other  
7 significant matters I'm working on.

8 But with respect to the injunction, my inclination  
9 would be not to enjoin a company that is going to dissolve  
10 and -- and the term I think they use is burn the remaining LBC  
11 that the company holds unless there were successors and assigns  
12 that are likely to repeat the behavior, right?

13 And so you say there aren't any successors and  
14 assigns. It's going out of business. It's dissolving. The  
15 SEC has this argument which I need to think more about, but  
16 which initially I'm not inclined to endorse, that Odyssey is  
17 effectively an affiliate, successor, or assign and for purposes  
18 of Rule 65 can be subject to an injunction even though it's not  
19 a party to the litigation.

20 I have some problems with that. I need to think it  
21 through. I'm not inclined to issue an injunction. But I need  
22 to think those arguments through, carefully consider your  
23 briefs and the positions you took at oral argument. Okay.

24 The second issue is -- that you've talked about is  
25 with respect to disgorgement. I'm inclined to, as I noted,



1 inclined to consider a tier 1 penalty if LBRY does what is  
2 suggested and I will be inclined to follow the monetary limit  
3 proposed there.

4 The SEC has an argument that I have to think  
5 through, as I understand it, that is gross receipts should be  
6 taken into account with respect to the determination of any  
7 penalty and even as a tier 1 penalty. I -- that's an  
8 argument -- I think that's an argument, Mr. Jones, or your  
9 colleague is presenting. If he wants to speak to it, he can.

10 I thought that's one of the things that he urged me  
11 to consider and I, frankly, haven't figured that one out yet.  
12 I need to go back and look more carefully at the law and  
13 determine whether and how I should consider all the factors I  
14 should consider in imposing a penalty.

15 I'm not inclined to impose a penalty based on gross  
16 receipts that don't result in any profits beyond the monetary  
17 number in a tier 1 penalty, but I haven't addressed that  
18 argument previously in any work that I've done, so I need to  
19 think about it. That's going to take some time. It isn't  
20 dependent upon the discovery that you're producing. Those are  
21 pure legal issues. But I just need to think through them.

22 So that's --

23 MR. JONES: Your Honor --

24 THE COURT: -- the answer --

25 MR. JONES: Your Honor --



1 THE COURT: Yeah, go ahead.

2 MR. JONES: On those points -- I'm sorry. I didn't  
3 mean to cut you off, your Honor.

4 On the injunction point, your Honor, a couple of  
5 things. One is to the extent that your Honor -- obviously it's  
6 the Court's timing and the SEC will not weigh in on whether or  
7 not the Court wants to put that out all at once or at the end,  
8 but two things on that.

9 One is to be very clear, we're not looking for  
10 Odysee to be specifically named in any injunction from the  
11 Court. We only ask that the Court impose the injunction  
12 pursuant to Federal Rule of Civil Procedure 65 and the limits.  
13 And if Odysee is, in fact, within those limits based on the  
14 facts, which we're not looking to seek now, then it is. And if  
15 it's not, then it's not.

16 We don't think that the Court need resolve whether  
17 Odysee is within the limits of Rule 65. We just think that to  
18 the extent that the Court issues an injunction and any entity  
19 or individual is within the limits of Rule 65, they're bound  
20 because that's the rule. And that's what we're asking for,  
21 your Honor.

22 And this injunction has become particularly  
23 important because following last week's hearing, your Honor,  
24 The Crypto Press and Mr. Deaton, to some extent, and even LBRY  
25 and Mr. Miller, have taken the position that the Court has



1 ruled and the SEC has somehow conceded that LBC itself are, by  
2 law, not securities and, by law, okay to trade on the secondary  
3 market.

4 I actually raised this with Mr. Miller last week.  
5 He said, well, no, once the SEC started to talk about Odysee  
6 and the judge was going to rule that they're not securities --  
7 I don't understand that that's what the Court was ruling, but I  
8 do think, your Honor, that, you know, that --

9 MR. KAUFFMAN: I'd really like -- could someone  
10 answer that? I've been waiting five years. Can someone tell  
11 me?

12 THE COURT: Stop it. Stop it.

13 Mr. Miller, please instruct your client that he's  
14 not to --

15 MR. MILLER: Jeremy.

16 First of all, your Honor. I've not made any public  
17 statements, so contrary to what Mr. Jones said, no public  
18 statements have been made by me.

19 So, secondly, however people interpret your hearing  
20 last week, they interpreted it. So --

21 MR. KAUFFMAN: I don't understand it. This is my  
22 last shot. I'm sorry.

23 You guys are the government. Under what conditions  
24 can this stupid token be sold? Just tell me. I thought by the  
25 end of this I would know and I still don't. SEC can't say who



1 can sell it and under what conditions and you, Judge, can't  
2 say --

3 THE COURT: Stop.

4 MR. KAUFFMAN: -- who can sell it and under what  
5 conditions.

6 THE COURT: Stop.

7 MR. KAUFFMAN: So who's going to -- go ahead and  
8 mute me. It's fine. It's over. The SEC has won. Odysee will  
9 die. LBRY will die. No one will --

10 THE COURT: Mr. Kauffman -- Mr. Miller, will you  
11 instruct your client that he's not permitted to speak.

12 MR. MILLER: Jeremy. Jeremy, please. Thank you.

13 THE COURT: Look, I've tried to be -- I've -- I've  
14 tried to work with Mr. Kauffman and in ways that I, frankly,  
15 don't tolerate from anyone else because I understand the  
16 frustration that he's feeling.

17 But I do -- I do want -- I mean, Mr. Jones, you  
18 understood what I was saying, I believe.

19 MR. JONES: I do.

20 THE COURT: And just so there's no question about  
21 it, let me try to say it again.

22 I have been concerned about what happens because  
23 ultimately the SEC is a -- an agency that is designed to  
24 protect investors, right? I mean, that's -- it exists to  
25 protect investors. People who bought unregistered LBC are the



1 kind of people that you're trying to protect, right?

2 MR. JONES: (Nods head.)

3 THE COURT: You're nodding your head yes. And --

4 MR. JONES: Yes, your Honor.

5 THE COURT: -- I've been concerned about those  
6 people and their lack of clarity about what they can do with  
7 what they purchased.

8 And it had been my hope that the SEC -- that the SEC  
9 could give those investors some clarity because they're the  
10 people you're supposed to be protecting.

11 MR. JONES: Yes.

12 THE COURT: You have elected -- wait. Just let me  
13 finish.

14 You have elected not to do that in this case. I've  
15 urged you to try to provide some clarity. You've made the  
16 point, which is correct, sorry, Judge, you're not the  
17 policymakers here, the SEC is, and we choose when we want to  
18 make our policy, and we don't in this case intend to make any  
19 statements about that. And I respect that you have that power  
20 and I don't.

21 And I understand that's a source of endless  
22 frustration for people that would like an answer, but I have  
23 explained, I've tried to explain, that courts cannot just reach  
24 out and do whatever the heck they want because they think it  
25 will help the public. I have to respond to the issues that the



1 parties raise. And the parties did not raise that issue with  
2 me and I do not have the power to force you to provide clarity.

3 And I understand that's frustrating -- that's  
4 frustrating, but I will act in accordance with my view about  
5 the extent of the judicial power I have because to do otherwise  
6 would be to usurp power that belongs to the public. Okay? And  
7 I'm not going to do that, whether people like it or not. And  
8 all I'm saying and have said is because the SEC has not  
9 litigated that question in my court, I can provide -- not  
10 provide an answer on that question.

11 And to the extent that the authors of a very careful  
12 Law Review article have tried to read something into my  
13 decision, they have read more into it than I was empowered to  
14 provide. And that's all I've said. I've said nothing more  
15 than that.

16 That's how you understand it, isn't it, Mr. Jones?

17 MR. JONES: It is, your Honor, and I appreciate that  
18 clarification. Obviously none of us control the message after  
19 it leaves the courtroom and -- but there was a substantial  
20 misimpression, I think, in no fault of anyone here on this  
21 call, from last week. And there was, you know, talk of the SEC  
22 LBRY precedent allowing secondary market sales. And I left the  
23 court believing, and now I'm confirmed, that that was not the  
24 Court's intention.

25 And just on the protecting of investors, your Honor,



1 because you brought it up, the SEC seeks to protect investors  
2 here by, frankly, getting disgorgement and a penalty that can  
3 redistributed to wrong investors. In a private securities  
4 standpoint a section 5 violation remedy is rescission. All of  
5 those investors would be allow to go back to LBRY and get their  
6 money back.

7 Here, because we're in the public context, we do it  
8 through disgorgement and penalty. That's why, your Honor,  
9 we've been fighting on disgorgement and penalty, to try to get  
10 whatever we can for investors and to try to make it clear, your  
11 Honor -- and we made -- Mr. Moores made this point to you --  
12 that there should not be an efficient breach of the securities  
13 laws. They should not be able to raise 15 billion, spend it  
14 all in the --

15 THE COURT: I'm very well aware of the efficient  
16 breach doctrine. I -- I teach it in -- I used to teach it when  
17 I taught at the Tuck Business School to -- when I explained  
18 business ethics. And so I understand the point. I'm not  
19 allowing efficient breach.

20 But I -- look, we'll just have to leave it at that  
21 with you.

22 MR. JONES: Yes, your Honor.

23 THE COURT: But Mr. Miller, do you -- do you think I  
24 said something other than what I've just said about secondary  
25 sales in the prior hearing?



1           MR. MILLER: Your Honor, with all due respect, the  
2     issue of whether Odysee should be enjoined and the issue of  
3     whether once a security not always a security was briefed in  
4     summary judgment and in opposition to our -- to our brief, page  
5     1 of the Commission's opposition to LBRY's motion --

6           THE COURT: Let's be clear about this, Mr. Miller.  
7     Again, I -- the issue -- you did not brief the issue of whether  
8     LBC, that is, part of an unregistered security offering, is in  
9     all contexts a security. You did not brief that. You briefed  
10    the question of whether sales that are registered securities  
11    can at some point in the future not be securities and that  
12    issue, I thought we were going to take up at remedy stage.

13           But it is not an argument that the SEC is addressing  
14    in this lawsuit. It is not asserting that future sales of LBC  
15    are unlawful. It is only asserting that LBRY's past offerings  
16    of LBC are unregistered securities offerings and that's what I  
17    addressed in that order.

18           I -- look, I understand that issue and I had been  
19    aware of it before you made the argument in your brief. I --  
20    and I had hoped we could address it. But it's not -- I'm not  
21    faulting you. I'm just saying the SEC controls what relief it  
22    seeks when it files a lawsuit and it did not seek the relief of  
23    in any way preventing persons who acquired LBC from an  
24    unregistered offering to be barred from further selling it  
25    without registering.



1 MR. MILLER: But, your Honor, they did. On the  
2 first page of their brief opposition it says: First, the Court  
3 should enjoin LBRY, including its wholly owned subsidiary  
4 Odysee.

5 And why? Because --

6 THE COURT: No, let me -- let me stop you. I -- I'm  
7 going to take up the issue of whether the injunction should  
8 extend to Odysee, but that's a separate question from the  
9 question of if somebody like -- what is it called, Flipside --

10 MR. MILLER: Flipside Crypto, yes.

11 THE COURT: -- they -- whether they can resell their  
12 LBC, that's a separate -- entirely separate question that I'm  
13 not going to address.

14 Whether Odysee should be enjoined, and I -- I get  
15 you on this. Okay? I -- I do not think it is appropriate to  
16 issue an injunction to unnamed successors and assigns when  
17 there's no evidence that there's a successor or assign. And  
18 where -- unless I were to find that Odysee was a successor and  
19 assign, I would not issue an injunction that would -- I mean,  
20 the idea that I would issue an injunction that Odysee would  
21 have no idea whether it extended to them or not is not  
22 something I'm going to do. Okay? So that's -- if that's what  
23 your concern is, I agree with you. That issue is an issue I  
24 will resolve.

25 MR. MILLER: Yes. I --



1           THE COURT: Look, I -- perhaps I shouldn't say  
2 anything more. I tried to make clear to the parties and to the  
3 investor community what the extent of my power was and what it  
4 wasn't and it was to address what I thought was a -- a  
5 legitimate concern that the parties had presented in a brief  
6 that lawyers drafting a Law Review article had read my opinion  
7 to say something in good faith.

8           Look, they weren't here. They didn't have the full  
9 access to the briefing that I had. They misconstrued something  
10 in my order. And I wanted to make clear because there were  
11 amici who were asking me to do something that I didn't think I  
12 had the power to do.

13           And, you know, that's -- I don't want to go further  
14 on it, but I will, Mr. Miller -- if what you're telling me  
15 you're concerned about is, yeah, Judge, we don't want you to  
16 issue an injunction as to Odysee, I understand your arguments  
17 on that and I'll consider the SEC's arguments and your argument  
18 and I will issue a ruling as to whether I'm going to issue an  
19 injunction as to Odysee.

20           But I'm not likely to do it in a kind of backdoor  
21 way where I just say, well, LBRY's dissolving, I have no idea  
22 who its successors and assigns will be, I'm just going to issue  
23 an injunction that if there are successors and assigns, they're  
24 enjoined, too. And does that reach Odysee? I'm not saying.  
25 I'm not going to do that. Okay? If that's what your concern



1 is, I'm not going to do that.

2 What else did you want to say, Mr. Miller?

3 MR. MILLER: I guess the only thing I would ask,  
4 your Honor, is in connection with ruling on that injunction for  
5 Odysee, which I've heard you clearly, there's no jurisdictional  
6 reentity, they were never sued. Understood.

7 It would -- I think the Court can say -- I mean,  
8 it's been cited both by the SEC and in our briefs about the  
9 fact that something isn't a security just in and of itself.  
10 The orange groves, the orange is not a security. Just in --  
11 this is something that the SEC commissioners said, that former  
12 Chairman Clayton has said, and it would help to be in an  
13 opinion because everyone's now looking at the judicial opinions  
14 because the SEC is regulating through enforcement.

15 THE COURT: I thought the SEC was taking up that  
16 issue in Ripple, weren't they?

17 MR. JONES: Well, your Honor, it is at play in  
18 Ripple, I believe, and in perhaps some other cases, but it's  
19 very clearly not in play in this case. We have -- we didn't  
20 take the discovery on whether LBC in secondary markets was  
21 getting sold as a security; we didn't make briefing on whether  
22 LBC getting sold by people other than LBRY.

23 You know, we argued whether or not this was an  
24 investment contract, that was the -- the theory put forth in  
25 the complaint extremely explicitly. The Howey test was the



1 structure of the complaint. We litigated that. We took  
2 discovery on whether or not the prongs of the Howey test were  
3 met. When LBRY sold LBC, that's what we adjudicated.

4 And the rest -- and I understand, your Honor, that  
5 everyone may be frustrated that we did not bring it up in this  
6 case, but we are constrained by similar maxims and principles  
7 and restraints, as the Court does, in what is brought up in  
8 litigation and what is done at policymaking and what is brought  
9 up in particular litigation and we try to adhere to that as  
10 well.

11 MR. MILLER: Judge, there's got to be  
12 consequences --

13 THE COURT: Yeah. Sorry. Mr. Miller, go ahead and  
14 then we're going to wrap up. I've sort of reached the end of  
15 my patience on this. I'll -- I'll give you some instructions  
16 where to go --

17 MR. MILLER: Yes.

18 THE COURT: -- but, Mr. Miller, what else did you  
19 want to say?

20 MR. MILLER: I just think there's got to be  
21 consequences. The SEC, the government, is bringing this  
22 action. You can't put your head in the sand and say, we're  
23 going to regulate through enforcement and then when an issue  
24 comes up that you don't want to discuss, you try to bury it.  
25 And it's being buried. That's exactly what's being happened



1 here -- is happening here.

2 All we're asking is that the Court say that these  
3 things are not securities in and of themselves. That's all  
4 we're asking. If the SEC wants to bring the case against  
5 somebody who has a bunch of LBC, they can do it if they can  
6 meet Howey requirements. But, your Honor, when you ruled, you  
7 said it was economic incentive. Keeping these premines,  
8 there's an economic incentive for people to rely on the efforts  
9 of LBRY. That doesn't exist once you -- once you burn the  
10 premine and dissolve LBRY.

11 So we're just asking that the Court take that into  
12 consideration. I get it. You're very constrained. But I do  
13 think there's some things that you can do for us, your Honor.

14 THE COURT: I'll -- I'll continue to think about the  
15 issue. And I recognize that whatever I do, no matter how clear  
16 I try to be, people will be inclined to interpret everything I  
17 do and say in ways that support their particular positions.  
18 And, frankly I have -- you know, my job is to do what I think  
19 the law requires and whatever people make of it, they will make  
20 of it. That's -- that's all I can say.

21 I -- I have been very clear that I -- I wish -- I  
22 think there is a substantial need for the SEC to consider that  
23 there are now and there will be digital tokens that are issued  
24 that are issued and intended to be used for consumptive  
25 purposes.



1           And the SEC needs to think about that particular  
2     issue and how tokens that are -- have a consumptive use and are  
3     part of an unregistered offering, how they should be dealt with  
4     ultimately. And it's not an issue that has been litigated here  
5     and I will think carefully about Mr. Miller's argument about  
6     what I can say and can't say.

7           But at the end of the day, it's not what a judge  
8     says, it's what the judge does that matters. The force of law  
9     is with respect to the ultimate order that I issue. The rest  
10    of it is just explanation. And so I have to be mindful of  
11    that.

12           So I -- I hear what you're saying. I -- I  
13    understand the frustrations of the community of LBC purchasers  
14    here and I have sympathy -- I'm sympathetic to those concerns.  
15    But I also am mindful about what my role is here in this  
16    proceeding.

17           So here's what we're going to do. Okay? LBRY,  
18    within 14 days -- and the sooner you do it, the better -- will  
19    produce the electronic files supporting the -- the P&L  
20    statement and -- what was it, Mr. Jones, you were asking for  
21    the balance statement as well?

22           MR. JONES: Yes, that's right, to include the  
23    balance statement in that, your Honor, and --

24           THE COURT: The P&L and -- right --

25           MR. JONES: -- the documents that support that.



1           THE COURT: -- the P&L & balance statement for  
2     inspection. Within 14 days after the receipt of that  
3     information, LBRY shall meet and confer and attempt to agree on  
4     a set of narrow, focused discovery requests, document requests  
5     and interrogatories, that address the specific issues that  
6     we've been discussing during this hearing. And after that  
7     conference, they shall issue those requests. Those requests  
8     shall be responded to within 30 days.

9           Following that request, if LBRY -- if the SEC  
10    wishes to take depositions they shall first meet and confer and  
11    attempt to agree with LBRY on any depositions to be conducted  
12    and if they can't agree, can request a further hearing at which  
13    the Court will identify who may be deposed, what subjects may  
14    be discussed in the deposition, and how long the depositions  
15    can take place.

16          Following the completion of any remaining discovery  
17    but within 14 days of the date that discovery is completed, the  
18    SEC shall produce a supplemental brief addressing the issue of  
19    remedy and LBRY shall have 14 days thereafter to submit a reply  
20    to the supplemental brief.

21          I will then take the matter under advisement. I  
22    will issue a decision.

23          I understand Mr. Miller's request to consider a -- a  
24    bifurcated ruling. I have a -- a significant amount of work  
25    that's in backlog that I'm trying to get through. If I finish



1 that backlog of work and I'm in a position to issue partial  
2 rulings, I will consider doing that if I think it will -- those  
3 rulings can get out early.

4 On the other hand, to the extent I think that it  
5 may require assessment of any additional evidence gained in  
6 discovery, I may defer that matter. I take no -- I won't make  
7 any final decision on it.

8 My -- I will issue a short order identifying these  
9 dates and what each party is supposed to do, but I want to  
10 emphasize I expect counsel, who are very experienced and  
11 reasonable, to meet and confer and attempt to agree on the  
12 minimal amount of discovery that the SEC needs to fulfill its  
13 responsibilities that will intrude to the least possible extent  
14 on LBRY's efforts to wind up its operations here.

15 And I do expect, and I will be assuming in any order  
16 I issue, that LBRY does intend to follow through with its  
17 agreements in its brief to dissolve -- burn the remaining  
18 holdings of premine and dissolve upon the issuance of any  
19 order. And I'll take that as an assumption. If that should  
20 change in any way, the parties should notify me.

21 Okay. So I'll issue a short order with deadlines  
22 and -- but I want to emphasize I expect the two of you to meet  
23 and confer and try to agree on these things. To the extent you  
24 can't, I'll come in, but the -- the patience I have for this  
25 kind of micromanagement is limited and you will be on the



1 receiving end of an increasingly frustrated set of discussions  
2 with me if you continue to involve me in micromanagement of  
3 discovery.

4 So do it if necessary, but I hope you can agree.  
5 And let's get this thing resolved. All right?

6 MR. JONES: Thank you, your Honor.

7 THE COURT: Okay. Thank you. And I may not speak  
8 to counsel again. I -- I do appreciate the way you have  
9 conducted yourself here. I know there's high animosity toward  
10 the SEC. Setting that aside, I think LBRY's counsel has been  
11 nothing but careful and reasonable and thoughtful, the SEC has  
12 provided good briefs, and I appreciate that because this is a  
13 difficult issue that you both have asked me to resolve.

14 So I -- I may not speak to you again. I just wanted  
15 to say I appreciate your help in trying to resolve these  
16 matters and, frankly, I hope I don't ever see you again.

17 MR. JONES: Yes, your Honor. We appreciate the  
18 Court's careful consideration of all of this and helping us  
19 find our way to the end, very much so.

20 THE COURT: Okay. Thank you. Thank you,  
21 Mr. Miller.

22 MR. JONES: Thank you, your Honor.

23 THE COURT: That concludes the hearing.

24 (Proceedings concluded at 11:56 a.m.)  
25



C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that  
the foregoing transcript is a true and accurate transcription  
of the within proceedings, to the best of my knowledge, skill,  
ability and belief.

Submitted: 3/23/23

/s/ Liza W. Dubois  
LIZA W. DUBOIS, RMR, CRR